

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOEL VALERA,

Petitioner,

v.

THE PEOPLE OF THE STATE OF
CALIFORNIA, CDCR,

Respondents.

Case No. 1:22-cv-01522-HBK (HC)

ORDER CONSTRUING PETITION AS
MOTION TO AMEND OR AMENDED
PETITION IN CASE NO. 1:22-cv-00852-
ADA-CDB

ORDER DIRECTING CLERK OF COURT TO
RE-FILE INSTANT PETITION AS MOTION
TO AMEND OR AMENDED PETITION IN
CASE NO. 1:22-cv-00852-ADA-CDB

ORDER DIRECTING CLERK OF COURT TO
CLOSE THIS CASE

Petitioner Joel Valera, a state prisoner proceeding pro se, filed this instant petition for writ of habeas corpus under 28 U.S.C. § 2254 on November 23, 2022. (Doc. No. 1). The Court takes judicial notice of its own files which reveal that Petitioner has a previously filed federal petition in this Court challenging the same conviction at case number 1:22-cv-00852-ADA-CDB. The Court construes the filing as a motion to amend the petition filed in Petitioner's earlier case and orders this matter closed.

In *Woods v. Carey*, the Ninth Circuit held that, under certain circumstances, if a pro se petitioner files a habeas petition during the pendency of a previous petition, the district court should construe the second petition as a motion to amend the previous petition. 525 F.3d 886,

889-90 (9th Cir. 2008). Hence, *Woods* appears to require a district court to construe a “second or successive” petition filed while an earlier petition is still pending in the district court as a motion to amend the earlier petition. Because Petitioner has a pending federal habeas petition in case number 1:22-cv-00852-ADA-CDB, which challenges the same conviction as in this case, the Court must construe this Petition as a motion to amend the earlier-filed petition. *See id.* at 889-90. Further, a review of the docket in case number 1:22-cv-00852-ADA-CDB reveals that, on November 2, 2022, the Court directed Petitioner to file an amended petition in his earlier case and afforded Petitioner thirty (30) days to file his amended petition. *See* Case No. 1:22-cv-00852-ADA-CDB, Order dated November 2, 2022 (Doc. No. 9). Thus, Petitioner may have intended the instant petition filed in this action to be his amended petition in his previously filed action.

Accordingly, it is **ORDERED**:

1. The Court construes the Petition (Doc. No. 1) as a motion to amend the petition or as an amended petition in case number 1:22-cv-00852-ADA-CDB.
2. The Clerk of Court is DIRECTED to contact United States Magistrate Judge Baker’s chambers and docket the petition in this case as either a motion to amend or as an amended petition in case number 1:22-cv-00852-ADA-CDB as directed by chambers.
3. The Clerk of Court is directed to close this case.

Dated: December 8, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE